

UNITED STATES DEPARTMENT OF ENERGY

+ + + + +

OFFICE OF ENVIRONMENT, SAFETY AND HEALTH

OFFICE OF WORKER HEALTH AND SAFETY (EH-

5)

+ + + + +

CHRONIC BERYLLIUM DISEASE PREVENTION PROGRAM

NOTICE OF PROPOSED RULEMAKING (NOPR)

DOCKET NUMBER EH-RM-98-BRYLM

+ + + + +

TRANSCRIPT OF PUBLIC HEARING

+ + + + +

VISITORS CENTER AUDITORIUM

15013 DENVER WEST

PARKWAY GOLDEN,

COLORADO

+ + + + +

TUESDAY

FEBRUARY 9, 1999

9:00 A.M.

The public hearing came to order, pursuant to notice, at 9:00 a.m., C. Rick Jones, Director, Office of Worker Protection Programs, presiding.

PANEL MEMBERS:

JACQUELINE ROGERS, Industrial Hygienist
Office of Occupational Safety and
Health Policy (EH-51)
Office of Environment, Safety and Health

MICHAEL MONTOPOLI, Medical Officer Office of Occupational
Medicine and Medical Surveillance (EH-61)
Office of Environment, Safety and Health

SCHEDULE OF PRESENTATIONS:	PAGE:
CALL TO ORDER AND OPENING REMARKS:	
C. Rick Jones, Presiding Official	4
 SPEAKER/AFFILIATION:	
Jerry Harden, President United Steel Workers of America, Local 8031	11
Janet Torma-Krajewski, Industrial Hygienist Rocky Flats Field Office Rocky Flats Environmental Technology Site	14
Joe Goldhammer, Esq. Representing Certain Workers Affected by CBD or Sensitization	29
Theodore J. Ziegler, Safety Representative, Retired United Steelworkers of America, Local 8031	40
Michael Jackson, Founder Beryllium Workers Support Group	64
 UNSCHEDULED SPEAKERS AND REBUTTAL/CLARIFYING STATEMENTS:	
Ted Tegeler, Safety Officer United Steelworkers of America, Local 8031	43
John Barton, Chair Grievance/Negotiations Committee United Steelworkers of America, Local 8031	45
Ronald Hill, Corporate Director Health and Safety Commodore Advanced Sciences, Inc.	46

David M. Navarro, Vice President
United Steelworkers of America, Local 8031

49

SCHEDULE OF PRESENTATIONS:	PAGE:
UNSCHEDULED SPEAKERS AND	
REBUTTAL/CLARIFYING STATEMENTS: (cont.)	
Marc Kolan	91
Brush Wellman, Inc.	
Jim Stone	94
Professional Engineer	
CLOSING REMARKS AND ADJOURNMENT:	
C. Rick Jones, Presiding Official	95

1 P-R-O-C-E-E-D-I-N-G-S

2 MR. JONES: Good morning, everyone, and
3 welcome. I am Rick Jones, the Director of the Office
4 of Worker Protection Programs and Hazards Management
5 (EH-52) within the Office of Worker Health and Safety
6 in Washington, D.C.

7 On behalf of the Department of Energy, I
8 would like to thank you for taking time to participate
9 in this public hearing concerning the proposed Chronic
10 Beryllium Disease Prevention Program, CBDPP,
11 particularly those of you who have come from some
12 distance.
13 The purpose of this hearing is to receive
14 oral testimony from the public on the DOE's Notice of
15 Proposed Rulemaking, or NOPR. Your concerns are not
16 only appreciated, they are essential to the rulemaking
17 process.

18 The publishing of the Notice of Proposed
19 Rulemaking that is the subject of today's public
20 hearing has been preceded by two years of information
21 gathering and data analysis by the Department. In
22 1996, the Department surveyed its contractors to
23 characterize the extent of beryllium usage, the types
24 of tasks involving beryllium usage, the controls in
25 place for each task and the estimated exposure levels

1 associated with each task.

2 To supplement the data obtained from the
3 1996 survey, the Department published a Federal
4 Register notice on December 30, 1996, requesting
5 scientific data, information and views relevant to a
6 DOE beryllium health standard. The survey and Federal
7 Register notice were then followed by two Beryllium
8 Public Forums, held in Albuquerque, New Mexico, and
9 Oak Ridge, Tennessee, in January 1997.

10 While the Department moved forward with
11 its rulemaking process, an Interim Chronic Beryllium
12 Disease Prevention Program was issued on July 15,
13 1997, as DOE Notice 440.1 to direct immediate action
14 for the protection of workers while rulemaking efforts
15 continued.

16 The Interim Notice established a Chronic
17 Beryllium Disease Prevention Program that enhanced and
18 supplemented worker protection programs already
19 required by current worker safety and health orders
20 with provisions that are designed to manage and
21 control beryllium exposure hazards in the DOE work
22 place.

23 Because of the complexity and significance
24 of issues regarding the development of a DOE health
25 standard for beryllium, a Beryllium Rule Advisory

1 Committee, or BRAC, was established in June 1997 to
2 advise the Department on issues pertinent to the
3 proposed rulemaking activity. DOE also used the BRAC
4 recommendations and the lessons learned in the
5 implementation of DOE Notice 440.1 to develop this
6 Notice of Proposed Rulemaking.

7 The objectives of the Notice of Proposed
8 Rulemaking are to: One, minimize the number of
9 workers exposed to beryllium; Two, minimize the levels
10 of beryllium exposure and the potential for beryllium
11 exposure; Three, establish medical surveillance
12 protocols to ensure early detection of Chronic
13 Beryllium Disease; and, Four, assist workers who are
14 dealing with beryllium health effects.

15 In addition, the Department intends to
16 collect and analyze exposure and health data as part
17 of its ongoing beryllium-related research efforts to
18 ensure the protection of workers' health. DOE will
19 consider amendments to its regulations as additional
20 information and feedback are collected. If you have
21 not already read the Federal Register notice from
22 December 3, 1998, I urge you to do so; copies are
23 available at the registration desk.

24 The comments received here today, and
25 those submitted during the comment period, which ends

1 on March 9, will assist the Department in the
2 rulemaking process. All written comments must be
3 received by this date to ensure consideration by the
4 Department of Energy.

5 The address for sending in comments is:
6 Jacqueline D. Rogers, U. S. Department of Energy,
7 Office of Environment Safety and Health, EH-51, Docket
8 Number 2H-RM-98-BRYLM, at 1000 Independence Avenue,
9 Southwest, Washington, D.C. 20585.

10 As the Presiding Official for this
11 hearing, I would like to set forth the guidelines for
12 conducting the hearing and providing other pertinent
13 information.

14 In approximately 14 days, a transcript of
15 this hearing will be available for inspection and
16 copying at the Department of Energy's Freedom of
17 Information Reading Room in Washington, D.C., as well
18 as at the DOE Oak Ridge and Rocky Flats Public Reading
19 Rooms; addresses are specified in the Federal Register
20 notice and are also available at the registration
21 desk.

22 The transcript will also be placed on the
23 Office of Environment, Safety and Health's Chronic
24 Beryllium Disease Prevention Program's Internet web
25 page, which can be accessed at:

1 <http://tis.eh.doe.gov/be/>.

2 In addition, anyone wishing to purchase a
3 copy of the transcript may make their own arrangements
4 with the transcribing reporter to my left.

5 This will not be an evidentiary or
6 judicial type of hearing. It will be conducted in
7 accordance with Section 553 of the Administrative
8 Procedures Act, 5 U.S.C Section 553, and Section 501
9 of the DOE Organization Act, 42 U. S. C. Section 7191.

10 To provide the Department with as much
11 pertinent information and as many views as can
12 reasonably be obtained, and to enable interested
13 persons to express their views, the hearing will be
14 conducted in accordance with the following procedures:

15 Speakers will be called to testify in the
16 order indicated on the agenda;

17 Speakers have been allotted ten minutes
18 for their verbal statements;

19 Anyone may make an unscheduled oral
20 statement after all scheduled speakers have delivered
21 their statements. To do so, please submit your name
22 to the registration desk before the conclusion of the
23 last scheduled speaker;

24 And, lastly, at the conclusion of all
25 presentations, scheduled and unscheduled, speakers

1 will be given the opportunity to make a rebuttal or
2 clarifying statement. To do so, again, please submit
3 your name to the registration desk.

4 Questions for the speakers will be asked
5 only by the members of the DOE panel conducting the
6 hearing.

7 As I explained, the purpose of this
8 hearing is to receive testimony from the public on the
9 DOE's Notice of Proposed Rulemaking. It is not the
10 purpose of this hearing to discuss individual lawsuits
11 that have been filed in court or claims that have been
12 filed under the Federal Tort Claims Act. This panel
13 will therefore not discuss litigation or claims.
14 Instead, I urge all speakers to provide this panel
15 with their comments, opinions and pertinent
16 information about the proposed rule.

17 As mentioned earlier, the close of the
18 comment period is March 9, 1999. All written comments
19 received will be available for public inspection at
20 the DOE Freedom of Information Reading Room in
21 Washington, D.C., which can be reached at (202) 586-
22 3142. Ten copies of the comments are requested.

23 If you have any questions concerning the
24 submission of written comments, please see Andi
25 Kasarsky at the registration desk. She can also be

1 reached at Area Code (202) 586-3012.

2 Any person submitting information which he
3 or she believes to be confidential and exempt by law
4 from public disclosure should submit to the
5 Washington, D.C. written comments address a total of
6 four copies: One complete copy with the confidential
7 material included, and three copies without the
8 confidential information.

9 In accordance with the procedures
10 established at 10 CFR 1004.11, the Department of
11 Energy shall make its own determination as to whether
12 or not the information shall be exempt from public
13 disclosure.

14 In keeping with the regulations of this
15 facility, there will be no smoking in this room.

16 Please also take note of the two exits, front and
17 rear. The restroom, drinking fountains, pay phone
18 and a copy machine are located out the rear exit and
19 to your right.

20 We very much appreciate the time and
21 effort you have taken in preparing your statements,
22 and are pleased to receive your comments and opinions.

23 I would now like to introduce the other
24 panel member. Joining me today is Jacqueline Rogers,
25 an Industrial Hygienist with the Office of

1 Occupational Safety and Health Policy, EH-51, within
2 the Office of Environment, Safety and Health in
3 Washington, D.C.

4 I would also like to acknowledge the
5 presence of line managers and other representatives of
6 the Rocky Flats Field Office in Kaiser-Hill.

7 This introduction has been lengthy but, I
8 hope, useful. Now it is time to move on to the reason
9 we are all here: To listen to your comments on the
10 Notice of Proposed Rulemaking.

11 At this time, I would like to call our
12 first speaker on the agenda. And, for the record, I
13 ask that each speaker please state his or her name and
14 whom you represent before making your statement.

15 At this time then, I would like to invite
16 Jerry Harden to the podium for opening statements.

17 MR. HARDEN: It's quite an ordeal just
18 getting there.

19 MR. JONES: It turns out to be.

20 MR. HARDEN: Good morning. My name is
21 Jerry Harden. I have been employed at the Department
22 of Energy Rocky Flats Atomic Weapons Plant for 32
23 years. I am currently the President of the United
24 Steel Workers of America, Local 8031, representing
25 1,350 members doing the clean-up and closure work at

1 the plant.

2 As a representative of the largest number
3 of current and retired workers suffering from the
4 effects of beryllium exposures in the weapons complex,
5 I'm appalled at the U. S. Department of Energy's lack
6 of interest in getting input from the Number One group
7 of stakeholders: The hands-on workers, the atomic
8 cold-war veterans.

9 Some of the DOE recommendations offer
10 cheap, short-term solutions for the ravaging effects
11 of life-long disease caused by the occupational
12 exposures to beryllium.

13 Other items that are too numerous to
14 mention offer quick fixes to the many difficult issues
15 involving beryllium; they only seem to control or
16 eliminate the Department of Energy's liability to the
17 talented and faithful work force that provided
18 materials and products for many of America's defense
19 needs.

20 The younger workers with Beryllium
21 Disease -- and their families -- are affected most
22 severely with the weak Colorado compensation laws that
23 don't adequately address the disastrous long-term
24 economic and health needs of these individuals and
25 their dependents.

1 The psychological effects to the affected
2 workers and their families have had a profound and
3 permanent effect that is basically ignored and
4 certainly not relieved by this proposal.

5 The sad part of the Department of Energy
6 beryllium story is that it was aware that the
7 inadequate standards and shoddy methods of sampling
8 were not effective and, yet, efforts of -- the
9 weapons complex contractors were encouraged to
10 facilitate production of nuclear weapon components.

11 The Department of Energy has spent
12 millions of U. S. tax dollars on slick, corporate-
13 style attorneys to effectively resist the beryllium
14 worker compensation claims. We believe that the
15 American taxpayers' money should be spent by providing
16 a humane, comprehensive, life-long program of
17 prevention, employment, treatment and compensation for
18 all of those suffering from the effects of beryllium.

19 Amazingly, there is little mention in this
20 draft of the unique problems involved with the clean-
21 up and tear-down conditions that most of our members
22 will face in their future work at Rocky Flats. The
23 fact that the U. S. Department of Energy routinely and
24 blatantly ignores conditions affecting workers in the
25 weapons complex by vigorously defending corporations'

1 mistakes needs to be sharply emphasized to the public
2 and to the congress.

3 Since the end of World War Two, the
4 workers have suffered more from the effects of atomic
5 weapons than any enemy of the United States.
6 Obviously, the members of Local 8031 are against most
7 of the proposed Department of Energy 10 CFR 850
8 regulations that are suggested here today.

9 Thank you.

10 MR. JONES: Thank you, Mr. Harden.

11 (Applause.)

12 MR. JONES: Do you have any questions?

13 MS. ROGERS: No.

14 MR. JONES: Thank you, very much for your
15 comments.

16 The next speaker we have this morning is
17 Janet Torma-Krajewski.

18 And, again, if you could, state your name
19 and affiliation.

20 DR. TORMA-KRAJEWSKI: Can everybody see
21 that in the back?

22 VOICE: Janet, do you want to use the
23 microphone?

24 MR. JONES: There's a microphone right
25 here at the --

1 DR. TORMA-KRAJEWSKI: I'm sorry.

2 MR. JONES: It should be able to capture
3 your voice, I think.

4 DR. TORMA-KRAJEWSKI: Yes. I think --
5 this is a small room.

6 Can you hear me back there?
7 (Pause.)

8 DR. TORMA-KRAJEWSKI: Okay. My name is
9 Janet Torma-Krajewski, and I represent the Rocky Flats
10 Environmental Technology Site for this presentation.

11 And I will be giving one -- only one presentation
12 today, and I think, though, that I will run into some
13 of the time allotted for the other presentation, as
14 originally scheduled for.

15 The comments I will be presenting address
16 the most critical issues for the Rocky Flats
17 Environmental Technology Site. Our comments address
18 either specific rule requirements or provide
19 information on topics listed in Section V of the
20 Preamble. Our comments were developed by a team
21 composed of both RFFO staff and Kaiser-Hill staff and
22 represent a consensus position of the industrial
23 hygiene, epidemiological, medical and legal personnel.
24 The Rocky Flats Environmental Technology
25 Site has an approved Chronic Beryllium Disease

1 Prevention Program Plan in accordance with DOE Notice
2 440.1, and has begun implementation of its
3 requirements. Both the Rocky Flats Field Office and
4 Kaiser-Hill support the promulgation of the proposed
5 rule, 10 CFR Part 850. We believe that the rule will
6 improve work practices and our effectiveness in
7 preventing Chronic Beryllium Disease.

8 Our review indicated some areas that do
9 need further clarification, while others require, in
10 our opinion, further study and the collection of
11 additional data. The purpose of this presentation is
12 to provide some information and recommendations from
13 the perspective of implementing this rule while
14 completing the mission of the Rocky Flats
15 Environmental Technology Site.

16 Appendices A and B and the Preamble state
17 that participation in medical surveillance is
18 voluntary for beryllium workers. Anonymous testing is
19 also being considered --

20 VOICE: We can't read it.

21 DR. TORMA-KRAJEWSKI: Okay.

22 MR. JONES: Andi, could you ask Christina
23 to come in and flip those lights?

24 (Pause.)

25 MR. JONES: Christina, could you come down

1 and just flip these lights for the doctor?

2 (Pause.)

3 MR. JONES: Do you want to pull up a
4 chair?

5 DR. TORMA-KRAJEWSKI: We'll just start on
6 that one.

7 MR. JONES: Just pull up a chair.

8 CHRISTINA: Am I in the way?

9 MR. JONES: Yes.

10 (Pause.)

11 MR. JONES: There we go.

12 CHRISTINA: How's that?

13 DR. TORMA-KRAJEWSKI: I'll just start over
14 on this one. Appendices A and B and the Preamble
15 state that participation in medical surveillance is
16 voluntary for beryllium workers. Anonymous testing is
17 also being considered for the final version of the
18 rule.

19 Although anonymous and voluntary testing
20 may promote participation in medical surveillance,
21 there are several significant disadvantages to such
22 approaches.

23 First, the ability to effectively manage
24 a medical surveillance program would be impacted. For
25 example, it would not be possible to conduct follow-up

1 or periodic testing, or to remove personnel from
2 beryllium work for medical reasons.

3 Secondly, it would be impossible to assess
4 the effectiveness of controls. Information from
5 medical surveillance would not be available to
6 determine the effectiveness of controls and potential
7 exposures.

8 Thirdly, DOE could not conduct meaningful
9 epidemiological studies to further define disease
10 incidence in relation to airborne exposures.

11 None of the OSHA-specific health standards
12 allow for anonymous testing, and many require
13 participation in the medical surveillance program if
14 the employee wants a job that involves exposure to a
15 health hazard, such as asbestos. DOE also requires
16 radiation workers to participate in medical
17 surveillance. It is recommended that participation in
18 medical surveillance be required for beryllium
19 workers.

20 VOICE: Can you lift that up as high as
21 you can?

22 CHRISTINA: Is that okay?

23 (Pause.)

24 DR. TORMA-KRAJEWSKI: As Section 850.33 of
25 the proposed rule is currently written, medical

1 surveillance is offered to all beryllium workers with
2 exposures at or above the action level or above the
3 STEL. DOE contractors are also required to offer
4 medical surveillance to former beryllium workers who
5 are still employed on site.

6 However, the proposed rule does not
7 include current employees who have never worked as
8 beryllium workers but have had past beryllium
9 exposure. At RFETS, there are approximately 1,500
10 such workers who have voluntarily participated in the
11 medical monitoring program initiated in 1991. Within
12 this population of workers, cases of CBD and
13 sensitization have been documented.

14 It is recommended that the proposed rule
15 be modified to include this population of workers
16 within the medical surveillance program and to make
17 medical monitoring available to all current workers.

18 (Pause.)

19 DR. TORMA-KRAJEWSKI: Oh, skip that one.

20 CHRISTINA: What?

21 DR. TORMA-KRAJEWSKI: Skip that one.

22 CHRISTINA: Skip it?

23 (Pause.)

24 DR. TORMA-KRAJEWSKI: Section 850.20,
25 "Baseline Beryllium Inventory," 850.21, "Hazard

1 Assessment," and 850.24, "Exposure Monitoring," only
2 require the person performing these activities to have
3 sufficient industrial hygiene knowledge to perform
4 such activities properly. No other requirements are
5 included in the rule.

6 To ensure quality and consistency in the
7 implementation of the Chronic Beryllium Disease
8 Prevention Program Plans, it is imperative that the
9 industrial hygiene aspects of this proposed rule, such
10 as hazard and risk assessments and exposure

11 monitoring, be conducted by an industrial hygienist.

12 The term "Industrial Hygienist" should be
13 clearly defined and consisted with the DOE definition
14 of an industrial hygienist in the "Functional Area
15 Qualification Standard," or the definition published
16 by the American Industrial Hygiene Association.

17 It is further recommended that an
18 industrial hygienist certified in the comprehensive
19 practice of industrial hygiene by the American Board
20 of Industrial Hygienists, with experience and/or
21 formal training in the industrial hygiene aspects of
22 beryllium, be required to have oversight and approval
23 authority of implementing the industrial hygiene
24 aspects of the proposed rule.

25 At RFETS, hazard assessments and

1 monitoring are conducted by industrial hygienists, and
2 the overall Chronic Beryllium Disease Prevention
3 Program Plan is being implemented by a CIH with
4 experience in the industrial hygiene aspects of
5 beryllium. To ensure consistency complex-wide, it
6 would seem appropriate to mandate the qualifications
7 of industrial hygienists involved with the
8 implementation of this rule.

9 Section 850.28(b) requires DOE contractors
10 to provide respirators to all workers who are exposed
11 to an airborne concentration of beryllium at or above
12 the PEL. Because much of the prior exposure data has
13 not been representative of eight-hour time-weighted-
14 average monitoring conducted in the breathing zone of
15 employees, it's not possible to say with certainty if
16 the current PEL is protective.

17 Consequently, until such an exposure
18 database becomes available for analysis, it would be
19 prudent to provide respirators when exposures exceed
20 the action level; such action would also indicate
21 support for the traditional industrial hygiene
22 approach of reducing exposures to as low as practical.

23 It is recommended that respirators be
24 required when airborne beryllium concentrations are
25 expected at or above the action level, and not the

1 PEL.

2 A major closure activity at RFETS is the
3 disposition of equipment, some of which is
4 contaminated with beryllium. Because DOE Notice 440.1
5 is silent with respect to a release criteria, it was
6 necessary for each site to develop its own process and
7 release criteria; this has led to inconsistencies in
8 the establishment of release criteria throughout the
9 DOE complex, which presents difficulties when trying
10 to justify the differences.

11 The RFETS Chronic Beryllium Disease
12 Prevention Program Plan includes two levels of
13 allowable surface contamination, depending upon the
14 receiver of the equipment. For equipment released to
15 the public or to other facilities where the equipment
16 will not be used for beryllium work, the criterion is
17 less than 0.2 micrograms per 100 square centimeters.

18 For equipment released to facilities where
19 the equipment will be used for beryllium work, the
20 criterion is either less than the allowable level of
21 the receiving facility or less than 2.5 micrograms per
22 100 square centimeters, whichever is less.

23 The process considers the current value of
24 the equipment compared to the cost of decontamination
25 and the cost of disposal. It is recommended the

1 proposed rule include release criteria and a general
2 process that could be applied consistently throughout
3 the DOE complex.

4 Section 850.2 states this part applies to
5 DOE offices responsible for DOE beryllium activities
6 and DOE employees exposed or potentially exposed to
7 beryllium at DOE-owned or -leased facilities; and,
8 Two, DOE contractors and contractors employed with
9 operations or activities involving exposure or the
10 potential for exposure of employees to beryllium at
11 DOE-owned or-leased facilities.

12 However, the only requirement for DOE
13 employees specifically stated is Section 850.32,
14 "Medical Surveillance," which requires the heads of
15 DOE Field Organizations to designate a Site
16 Occupational Medical Director who shall be responsible
17 for administering a medical surveillance program for
18 federal employees who are beryllium workers. All
19 other sections specifically state the requirement is
20 for DOE contractors.

21 Some DOE requirements may be met as a
22 result of the contractor meeting the requirement, such
23 as the completion of the baseline beryllium inventory.
24 However, all aspects of the contractor Chronic
25 Beryllium Disease Prevention Program would not be

1 directly applicable to DOE employees.

2 Because federal employees can be
3 considered as beryllium workers from an exposure
4 potential perspective and some federal employees have
5 been diagnosed either with CBD or sensitization, the
6 same requirements and protections should be provided
7 to both DOE and contractor employees.

8 It is recommended that all requirements
9 and protections be applicable to DOE employees by
10 stating in parentheses, "DOE (and DOE contractors)
11 shall," end quotes. Also, DOE should be required to
12 develop its own CBD Plan that will allow consistent
13 application of rule requirements for both DOE and
14 contractor employees.

15 In the Preamble, it is stated that the
16 Department of Energy is considering alternatives to
17 the action level and permissible exposure level as a
18 basis for judging and interpreting exposure monitoring
19 results. The published studies referenced in the
20 Preamble have based their exposure assessments only on
21 a limited number of air sampling results
22 representative of eight-hour time-weighted averages
23 and collected as personal breathing zone samples.

24 The reported exposure assessments have
25 been heavily based on area monitoring collected over

1 varying time periods, sometimes as long as 24-hour
2 periods, and high-volume samples collected for short
3 periods of time, such as 15 minutes, and then
4 extrapolated mathematically to represent eight-hour
5 time-weighted-average samples.

6 It is recommended that an outcome from
7 this rule should be the compilation of exposure
8 assessment data representative of eight-hour time-
9 weighted averages collected as personal breathing zone
10 samples. An analysis of this data should then be
11 conducted to determine the best approach for judging
12 and interpreting exposure monitoring results, whether
13 it be the action level and PEL or other alternatives,
14 such as percent exceedance.

15 When conducting this analysis, it is
16 important to also consider using only those monitoring
17 results exceeding the upper confidence limit, taking
18 into account the sampling and analytical error, when
19 identifying an exposure that is out of compliance with
20 the requirement. This method would be the same used
21 by OSHA when determining non-compliances with
22 permissible exposure limits.

23 In addition, the economic and
24 technological feasibility of achieving compliance with
25 any alternative methods, such as the percent

1 exceedance, must be determined. It is also
2 recommended that the Cardiff exposure database be
3 analyzed since this database represents the only
4 extensive database of eight-hour time-weighted-average
5 breathing zone air monitoring results, collected over
6 the 30-year history of the Cardiff facility.

7 Section 850.22 requires DOE contractors to
8 not expose any worker to an airborne concentration of
9 beryllium over 2 micrograms per cubic meter,
10 calculated as an eight-hour TWA exposure, as measured
11 in the worker's breathing zone by personal monitoring,
12 or a more stringent time-weighted-average permissible
13 exposure limit that may be promulgated by the
14 Occupational Safety and Health Administration as a
15 health standard.

16 DOE has stated in DOE Order 440.1 that DOE
17 will adhere to either OSHA permissible exposure levels
18 or the American Conference of Governmental Industrial
19 Hygienist threshold limit values, whichever is the
20 more stringent requirement. The above section of this
21 proposed rule is not in agreement with this position.
22 Because the proposed rule falls under the umbrella of
23 the DOE Order 440.1, both should be consistent.

24 Additionally, the American Conference of
25 Governmental Industrial Hygienists has recently

1 proposed a TLV of 0.2 micrograms per cubic meter for
2 beryllium. Should this change occur and should the
3 proposed rule be modified to be consistent with DOE
4 Order 440.1, then the ability to comply with the
5 lowered TLV will be impacted.

6 The concept of using an action level in
7 the proposed rule will also be impacted should DOE
8 adopt the proposed TLV change. It is recommended that
9 the proposed rule be consistent with DOE Order 440.1
10 or provide a justification for the inconsistency, and
11 that the impacts of meeting the proposed lowered TLV
12 be addressed if it is accepted by DOE.

13 MR. JONES: Thank you, Dr. Torma-
14 Krajewski.

15 Does the panel have any questions?

16 (No response.)

17 MR. JONES: Very good. I would also like
18 to take this opportunity to introduce Dr. Michael
19 Montopoli on my left. He is a Medical Officer in the
20 Office of Occupational Medicine and Medical
21 Surveillance, EH-61, within the Office of Health
22 Studies in Washington, D.C.

23 DR. MONTOPOLI: Thank you, Rick.

24 Actually, I did have one question on
25 medical surveillance. The -- you seem to imply that

1 a voluntary medical surveillance program would not
2 permit you to analyze data, either individual or group
3 data, to determine exposure patterns. Did I
4 understand you correctly?

5 DR. TORMA-KRAJEWSKI: Well, when you look
6 at both the options of anonymous testing and voluntary
7 testing, it would be difficult to do epidemiological
8 studies because you wouldn't be able to match up
9 exposure data with medical outcomes.

10 DR. MONTOPOLI: And do you distinguish at
11 all between the anonymous, where you don't know the
12 identity of the worker, and voluntary, where you do
13 know the identity of the worker but you --

14 DR. TORMA-KRAJEWSKI: Well, if it's
15 voluntary, then your population is going to be
16 limited. You would have exposure data, but you
17 wouldn't have medical outcome data that matched with
18 it.

19 DR. MONTOPOLI: Okay.

20 DR. TORMA-KRAJEWSKI: So it would still be
21 difficult to do those studies.

22 DR. MONTOPOLI: All right. Thank you.

23 MR. JONES: Thank you for the
24 clarifications.

25 The next person on the agenda: Joe

1 Goldhammer.

2 And, again, if you could state your name
3 and affiliation, I'd appreciate it.

4 MR. GOLDHAMMER: Sure. I'm Joe
5 Goldhammer, and I represent a number of workers who
6 have Beryllium Disease or sensitization from beryllium
7 who are in the Colorado Workers Compensation System,
8 which may be a misnomer, but I have over the last 12
9 or 13 years represented workers who have Beryllium
10 Disease or who have sensitization to beryllium.

11 And so my perspective on these
12 regulations -- I might also say that I am a union
13 labor lawyer and have represented unions in my -- the
14 core of my practice is the representation of unions.

15 And the reason I bring that up is that the
16 first regulation I'd like to address myself to is --
17 I think it's 850.5, which is the provision that
18 provides in the rules that dispute resolution under
19 the rules shall be resolved through the applicable
20 grievance and arbitration processes, and the
21 explanations for the rules which precede the rules on
22 page 66952 explain that proposed Section 850.5 is
23 designed so that employees covered by collective
24 bargaining agreements will have to go through the
25 grievance and arbitration procedures that are provided

1 for in those collective bargaining agreements.

2 And from a labor lawyer's point of view,
3 I wonder whether that's legal -- I raise the question
4 as to whether that's legal, at least without initially
5 bargaining with all of these unions and getting their
6 agreement that these proposed rules will come under
7 their collective bargaining agreements.

8 What you're in fact doing is basically
9 incorporating a set of rules into these collective
10 bargaining agreements and then imposing upon unions
11 the responsibility for the enforcement of these rules
12 as far as the employees are concerned without ever
13 asking or talking to the unions that are involved.
14 I've talked to a couple of the unions that are present
15 here this morning, namely Sheet Metal Workers Local
16 Number 9 and Steel Workers 8031. And it's my
17 understanding from those representatives that they've
18 never been spoken to about these regulations.

19 In other words: It's common for
20 collective bargaining agreements to incorporate
21 outside law into those collective bargaining
22 agreements. We do that with the ADA. We do that with
23 some discrimination laws. But there are provisions in
24 those collective bargaining agreements where both
25 parties to the agreement, namely the union and the

1 company, consent to the incorporation of those
2 provisions.

3 Here, you're trying to impose that by
4 outside rules. And I, from my point of view, although
5 I'm not speaking for my clients on this, would welcome
6 the opportunity to collective bargain about some of
7 the things that are happening to beryllium workers at
8 Rocky Flats and in Colorado.

9 And if you want to do that, then we ought
10 to do that, but we shouldn't impose from an APA
11 rulemaking point of view the obligation to enforce
12 these provisions of these rules through the collective
13 bargaining process unless you have the active
14 participation and consent of the collective bargaining
15 representatives themselves, the unions.

16 Now, of course, that doesn't apply to non-
17 collectively bargained represented employees because
18 they are -- they enforce the provisions of the rules
19 through the referral to the Department's Office of
20 Hearings and Appeals. But it may be more effective to
21 utilize the collective bargaining process -- and I'm
22 not saying that that isn't a good way to go; all I'm
23 saying is that if it is a good way to go, then we
24 ought to involve the unions in that process.

25 And if you don't involve the unions in

1 that process, then you're bypassing the unions. And
2 that may be illegal under Section 8(a)(5) of the
3 National Labor Relations Act, which does govern these
4 contractors because they are considered to be members
5 of the private sector.

6 And there is a comment in the proposed
7 rules about bypassing unions. I can't believe it; I
8 mean you're bypassing the union by imposing on the
9 union the obligation to enforce the provisions of
10 these rules without even talking to the unions about
11 whether they're willing to do that or under what
12 circumstances they're willing to do that or what
13 substantive changes have to be made in the rules in
14 order for them to be willing to do that.

15 And Mr. Harden suggested this morning that
16 vast substantive changes need to be made in these
17 rules as far as that's concerned. In other words:

18 Where do you get the idea that job protection will
19 only extend for two years? Where do you get the idea
20 that people cannot displace other persons in the work
21 force?

22 Where do you get the idea -- I mean these
23 are somehow manufactured out of thin air, whereas, if
24 you had a collective bargaining process to determine
25 these things and could determine the long-range impact

1 of Beryllium Disease on individuals as I have seen
2 those individuals, you might come to different
3 conclusions about those subjects.

4 There's another section of the rule -- and
5 tell me when I go over time, because I'm a lawyer and
6 I have -- I happen to be very verbose.

7 But 850.36(3)(b) of the rule relates to
8 communicating with BE workers concerning the
9 availability of certain types of benefits that are
10 available to those workers, namely psychological and
11 career counseling for workers, workers' compensation
12 claims, et cetera. That one is a difficult one, and
13 I can only express to you my deepest feelings about
14 the Dr. Jekyll-and-Mr. Hyde mentality that I find in
15 representing beryllium workers.

16 On the one hand, we hire the best doctors
17 in the world to treat them. And these rules provide
18 through the surveillance program for referral to
19 doctors, and it should be assured that the best
20 doctors are maintained to treat these people. Doctors
21 in Philadelphia at the University of Pennsylvania
22 Medical Center, doctors here in Denver at the National
23 Jewish Center: Those are the best doctors in the
24 world to treat beryllium patients.

25 And then, once those doctors diagnose

1 Beryllium Disease and find that the patients are
2 disabled from Beryllium Disease, the contractors hire
3 the most -- I'm trying to think of a diplomatic
4 word -- the most subject to being hired as hired-gun-
5 doctors to dispute every word that the fine doctors
6 that you've already hired to diagnose the disease have
7 stated.

8 In particular, here in Colorado, in
9 virtually every case, the contractors hire a doctor
10 named Lawrence Repsher, who disputes everything that
11 is said by the fine doctors at National Jewish and the
12 fine doctors at the University of Pennsylvania,
13 creating a highly charged, hostile, totally difficult
14 atmosphere for these Beryllium Disease patients.

15 On the one hand, they're told, "We're
16 going to give you the best care in the world," and
17 they are given the best care in the world. On the
18 other hand, they're told, "We're going to make life as
19 difficult for you as we possibly can in pursuing any
20 workers' compensation claims."

21 Now, I'd like to hear the counseling that
22 you're going to give these beryllium workers under the
23 proposed rule that I just cited, 850.36(3)(b), when
24 you counsel them about filing workers' compensation
25 claims.

1 The brief counseling that I might give
2 them is, "If you want to go through hell, file a
3 workers' compensation claim, because that's what the
4 Department is going to put you through; They are going
5 to put you through this Dr. Jekyll-and-Mr. Hyde
6 experience, where you're treated well, and you're
7 treated as badly as you possibly can be treated." And
8 that doesn't make any sense.

9 How are you going to counsel? What does
10 that mean, to counsel somebody about a workers'
11 compensation claim? Maybe you ought to get competent
12 attorneys who have represented Beryllium Disease
13 patients to counsel them, but it seems to me, at the
14 very least, to pose a conflict of interest to have the
15 Department, without any union representation or other
16 representation for these employees, to have that kind
17 of counseling.

18 These employees are going through very,
19 very difficult experiences, and one of the main
20 reasons for their psychological problems in Colorado
21 is the difficulty of the litigation and the workers'
22 compensation claims that you put them through. That
23 is the reason -- one of the main reasons why they are
24 suffering so psychologically, and then they turn, and
25 justifiably so, for psychological help.

1 That is not to say -- and I think that the
2 surveillance section, namely 850.33(i), which provides
3 for referral for further diagnostic evaluations -- the
4 employees, after being given an option, should be --
5 should determine who their doctors are going to be.
6 Their doctors right now are the best, and they should
7 remain the best.

8 And, given the fact that I have only ten
9 minutes, am I at the limit?

10 (Pause.)

11 MR. GOLDHAMMER: I am not at the limit?

12 MR. JONES: You may continue a little
13 longer.

14 MR. GOLDHAMMER: Okay.

15 I agree with the -- I believe the prior
16 speaker -- I must pay homage to her; she did a
17 fantastic job. I cannot begin to pronounce her last
18 name. I'll just call her Janet, if she will excuse
19 me. I think she made some comments that indicate that
20 beryllium workers at the -- at Rocky Flats that -- and
21 I have represented workers out there who had no
22 exposure to beryllium or -- no known exposure to
23 beryllium at all.

24 And the definition of a beryllium worker
25 in 850.3 should be expanded to include all workers at

1 Rocky Flats because we have found in -- the
2 epidemiological studies that have been done by Dr.
3 William Stange out at Rocky Flats have indicated that
4 people who have occupied clerical positions, people
5 who have occupied administrative positions and people
6 who have never worked in the beryllium buildings have
7 been exposed to beryllium and have Beryllium Disease,
8 have severe cases of Beryllium Disease.

9 And, despite the fact that the contractors
10 have tried to -- and I think that your studies and --
11 that are incorporated into the explanations for the
12 Federal Register are accurate on this point: Despite
13 our attempts at finding out why these people have
14 Beryllium Disease, I mean the fact of the matter is
15 that Dr. Stange's studies show that a very minute
16 exposure to beryllium can cause the disease.

17 And so you don't have to be a beryllium
18 worker, whatever that term implies. And I think that
19 the words in English imply that it's somebody who has
20 worked with beryllium. And, of course, we know that
21 it's all workers at Rocky Flats who have been exposed
22 to sufficient levels of beryllium that, given their
23 own immunologic propensities, then can come down with
24 extremely severe cases of the disease.

25 So I think that the Federal Register does

1 have to do a better job in defining who is qualified
2 or who should be eligible for the benefits that are
3 provided, including beryllium surveillance, and that
4 includes all workers at the facility; it doesn't --
5 and it doesn't only include those workers who have
6 worked with beryllium.

7 I commend you to this task, and I really
8 hope that you apply your considerable talents in
9 finding solutions to the very, very severe problems
10 that these human beings face out there.

11 Thank you.

12 MR. JONES: Thank you, very much, Mr.
13 Goldhammer.

14 (Applause.)

15 MR. JONES: Does the panel have any
16 questions?

17 MS. ROGERS: Yes.

18 Mr. Goldhammer, there was a section of the
19 labor -- National Labor law that you quoted, and I
20 didn't get that section down. Could you repeat it?

21 MR. GOLDHAMMER: Right. It's Section
22 8(a)(5) --

23 MS. ROGERS: 8(a)(5)?

24 MR. GOLDHAMMER: -- of the National Labor
25 Relations Act --

1 MS. ROGERS: Okay.

2 MR. JONES: -- which imposes a duty to
3 bargain on employers and unions when the unions have
4 been designated as the exclusive bargaining
5 representative for the employees regarding wages,
6 hours and other terms and conditions of employment.

7 So what that provisions requires is that,
8 when there is a collective bargaining representative,
9 all issues concerning wages, hours and other terms and
10 conditions of employment be bargained with the union.

11 And to bypass the union is illegal under that section.
12 And so what I'm saying is that if you impose duties on
13 a union without discussing that first with the union,
14 you're -- you may be violating that duty to bargain.

15 MS. ROGERS: Okay. Thank you.

16 MR. JONES: Thank you, very much.

17 DR. MONTOPOLI: Rick, could I just ask one
18 question on that point?

19 Did bargaining take place during
20 implementation of, for example, OSHA rules, the
21 cadmium rule or the asbestos rule, where -- was there
22 any bargaining between the Department and the unions
23 when -- on those rules -- I know this is different
24 because it's a DOE rule.

25 MR. GOLDHAMMER: I have no idea.

1 DR. MONTOPOLI: Okay.

2 MR. GOLDHAMMER: I just can't answer your
3 question because I just do not know the answer to it.

4 DR. MONTOPOLI: Okay. Thank you.

5 MR. JONES: Well, thank you, very much,
6 for your comments. And we very much appreciate them.

7 MR. GOLDHAMMER: Thank you.

8 MR. JONES: Our next speaker: Ted
9 Ziegler.

10 MR. ZIEGLER: Good morning. My name is
11 Ted Ziegler, a 13-year employee at Rocky Flats with
12 the Steel Workers, Local 8031. And my concerns this
13 morning focus on primarily the beryllium issues, even
14 though there are other issues in the proposal that
15 reflect that other individuals should be notified to
16 attend meetings of this such to express their
17 comments.

18 And I would like to express my comments
19 and concerns in regard to the request of Secretary of
20 Energy, Bill Richardson on December 3, 1998, as
21 published in the Federal Register, Volume 63, Number
22 232, on the new proposed rules to improve worker
23 protection and prevention of Chronic Beryllium
24 Disease.

25 It must be made quite clear that we, the

undersigned, and numerous other current and former employees at Rocky Flats are concerned about the direction the Beryllium Health Surveillance Program funded by the Department of Energy is headed.

As of October 1, 1998, employees at Rocky Flats have been excluded from participating in the Beryllium Health Surveillance Program, with the exception of employees currently working in beryllium areas and employees requiring follow-up surveillance.

We are requesting that the BHSP remain equitable for all current and former employees at Rocky Flats, as it was prior to October 1, 1998.

Historical data has been compiled to show many current and former employees at Rocky Flats were utilized in the beryllium areas or had ongoing assignments in these areas. Even employees who only occasionally frequented those areas have been placed at risk of developing Chronic Beryllium Disease Prevention or, at the very least, a sensitization to beryllium and its associated health problems.

This data should place these employees in the same category as BE workers, and they should not be excluded from participating in the Beryllium Health Surveillance Program. And I'm referring to the medical surveillance at page 66948, which is attached.

1 We continue to ask for a resolution to
2 address these concerns so they remain equitable for
3 all current and former employees at the Rocky Flats
4 plant or any other DOE facility so they may be allowed
5 to participate in the Beryllium Health Surveillance
6 Program now and in the future.

7 We also have concerns that the 39-page
8 proposal or -- proposed rules appear to be tailored
9 for the contractor budgets and a reduction of the DOE
10 funding for the BHSP. This would be not fair or in
11 the best interest of the health of all employees who
12 may have had periodic or recurrent visits or who
13 actually worked in any one of approximately 258 rooms
14 in an estimated 25 buildings containing beryllium
15 during their employment at Rocky Flats.

16 And I have a list of the buildings
17 attached.

18 We have concerns on other issues addressed
19 in the transcript of these proposed rules and request
20 the appropriate advisors and interested employees
21 affected by the suggested changes be contacted and
22 have an opportunity to address and express their
23 concerns, as well.

24 It is emphasized in the proposed rules in
25 excess of 280 times that this issue needs to be re-

1 addressed to include employees. "Beryllium worker",
2 and, "Worker," now, that's addressed 280 times. And
3 I again reference the medical surveillance on page
4 66948.

5 These proposed rules are an unnecessary
6 set of similar rules to the ones that have been in
7 place since 1984 at the Rocky Flats plant, and they
8 show no beneficial improvement at this time of the
9 standards currently being used there. And that's what
10 I had to address here on beryllium issues, and I thank
11 you for your time.

12 MR. JONES: Thank you, Mr. Ziegler.
13 Does the panel have any questions of
14 clarification?

15 MS. ROGERS: No.

16 MR. JONES: All right.

17 Thank you, so very much, for your
18 comments. We very much appreciate that.

19 We have two other folks who have signed up
20 to make presentations, and I'd like to give them the
21 opportunity to speak. The first is Ted Tegeler.

22 Mr. Tegeler?

23 MR. TEGELER: Thank you.

24 My name is Ted Tegeler. I'm the third-
25 ranking elected officer at Rocky Flats plant, United

1 Steel Workers of America, Local 8031; I'm also the
2 Chief Safety Officer. I've been employed at Rocky
3 Flats for over 30 years.

4 I'm very disappointed with the proposed
5 rule where it states in the Preamble that you had
6 worker participation. I must tell you: As the safety
7 chairman at Rocky Flats, as knowing the officers at
8 Rocky Flats -- and all the employees -- we have not
9 been spoken to, we have not been given an opportunity,
10 to help draft or make comments in this proposal.

11 That certainly flies in the face of DOE's
12 own Enhancement Planning Program, where the worker is
13 supposed to be a part of the grass-roots effort, not
14 to review and comment on the proposal but to actually
15 help build that proposal. We need that grass-roots
16 effort. We need that involvement up front. And,
17 again, the workers were ignored.

18 I have several issues with the proposed
19 rule, although most of the comments I was going to
20 make have been quite eloquently covered. So I'll try
21 not to be redundant.

22 One of the biggest things, though, that I
23 see is the need of life-time health and medical
24 benefits for the workers not going through the
25 workers' comp. system, as Chronic Beryllium Disease is

1 a gift that keeps on giving. The proposed rule also
2 takes away union jobs. It states that we need a
3 certified industrial hygienist to collect the surveys
4 and smears where our RCTs, which is the Radiological
5 Control Technicians, are the ones that have always
6 done it in the past.

7 I agree that the industrial hygienists
8 ought to analyze and interpret the results of the
9 surveys, but, certainly, to deem us incompetent to
10 take those surveys after we've done it for over 30
11 years is another slap in the face.

12 I really believe that we need to start
13 over with a clean sheet of paper, we need to get the
14 right people involved and we need to make sure that it
15 addresses the needs and concerns of the workers, not
16 the needs and concerns of DOE, as they greatly differ.

17 Thank you.

18 MR. JONES: Thank you, Mr. Tegeler.

19 Does the panel have any questions of
20 clarification?

21 (No response.)

22 MR. JONES: Thank you, very much, for your
23 comments. I appreciate that.

24 Mr. John Barton?

25 MR. BARTON: Hello. My name is John

1 Barton, and I represent Local 8031. I believe that
2 your proposed rules have forgotten the workers that
3 are cleaning up Rocky Flats.

4 We are being exposed every day to
5 beryllium and other toxic chemicals. Lab results take
6 nine months to get back to us. Bonus money is given
7 by using our bodies, and, yet, when we leave the site,
8 we have no guarantee that we will have medical
9 benefits; no one wants to assume the risk our bodies
10 have taken to make your world a safer place.

11 Beryllium and the worker, until death do us part.

12 MR. JONES: Thank you, Mr. Barton.

13 Any questions of clarification?

14 (No response.)

15 MR. JONES: Very good.

16 Thank you.

17 We have one more individual that has
18 signed up, Ronald Hill.

19 Would you like to make a statement?

20 MR. HILL: My name is Ron Hill. I want to
21 make it clear that my comments today are representing
22 my opinion. My opinion is based on some activities
23 I've done as an industrial hygienist over 20 years.

24 I'm the past president of the Rocky
25 Mountain section of the American Industrial Hygiene

1 Association and a past officer for the Colorado
2 Industrial Hygiene Council, and I'm a current director
3 of the America Industrial Hygiene Association, but I
4 want to make it clear that my comments are based on my
5 experience with these organizations; I'm not
6 representing the opinions of any of those
7 organizations with my comments today.

8 I want to basically support and expand the
9 comments that Dr. Torma-Krajewski made earlier about
10 qualifications of industrial hygienists to do this
11 work. She mentioned that the work should be overseen
12 by a certified industrial hygienist. I whole-
13 heartedly agree. I also think it might be appropriate
14 to help define the credentials for industrial
15 hygienists to also include the IHIT, Industrial
16 Hygiene in Training, within the regulation.

17 Also, based on my experience in
18 promulgating regulations within the state of Colorado
19 and working with government affairs from National
20 AIHA, I've learned that it also would be important in
21 these definitions to include CIH and IHIT as defined
22 by the American Board of Industrial Hygiene and/or its
23 successor.

24 The reason I say that is because
25 industrial hygiene definitions are being debated

1 currently. And, again, based on my experience, I
2 don't know exactly where those will end up. So I
3 think it would be important to, again, include the
4 term, "Or successor," in defining those.

5 Also, I would encourage the DOE to contact
6 the Government Affairs of AIHA to get the definition
7 of industrial hygienist. That would be the most
8 current and most thorough definition that I believe
9 you could get at this time.

10 And, again, I encourage you to get that
11 and fix it within this regulation, again, because that
12 definition is under debate and is subject to change
13 other than the standard definition for industrial
14 hygienist which, unfortunately, does not exist.

15 And I say that based on the experience of
16 a number of state legislators who are in the process
17 of getting Governmental Affairs activities to define
18 industrial hygienists for state regulations. And
19 those can vary from state to state. So, again, I
20 would encourage you to fix that in the language within
21 your regulation.

22 Mr. Goldhammer made comments that attempts
23 have been made to hire the best physicians to protect
24 the working man and working woman from Chronic
25 Disease. Again, I would like to expand on that. I

1 think it is imperative that the DOE look at hiring the
2 best industrial hygienists and certified industrial
3 hygienists to oversee these activities.

4 It is within the ethical code of the
5 certified industrial hygienist and industrial
6 hygiene -- excuse me -- the IHITs to do everything
7 within our knowledge and experience and capabilities
8 to protect the health of the working man and woman in
9 this country, at Rocky Flats, in the DOE system and
10 otherwise. And so, again, I would encourage you to
11 have these definitions, especially those from the ABH,
12 incorporated within this regulation.

13 Thank you.

14 MR. JONES: Thank you, very much.

15 Does the panel have any questions of
16 clarification?

17 (No response.)

18 MR. JONES: Okay.

19 Thank you, very much, Mr. Hill.

20 Are there any other folks that would like
21 to make statements at this time?

22 Yes, sir. If you could, please, come to
23 the podium and give your name and affiliation, I'd
24 very much appreciate it, sir.

25 MR. NAVARRO: My name is David Navarro;

1 I'm the Vice President of Local 8031, United
2 Steelworkers. I'm also one of the six founding
3 members of the Rocky Flats Citizens Advisory Board
4 back in '93 -- '94. My first comment has to deal with
5 this process of public comment on these proposed rule
6 changes.

7 The company has already implemented some
8 of these proposed rules. So when we heard that -- and
9 this was in the last month -- we really wondered
10 whether there was any due process to be gained by this
11 public meeting. It appeared to us that, at least, the
12 company, Rocky Flats, had already decided this
13 proposed rule is a rule.

14 So that's my first comment as far as
15 public participation. I brought this up to Jessie
16 Roberson at the State of the Flats meeting a couple
17 weeks ago, and, even though they gave a high, glossy
18 production to public participation in regard to Rocky
19 Flats, she referred me to address you folks on this
20 issue.

21 So that's my first comment. I've heard a
22 lot of very positive comments today; I would certainly
23 hope that your panel will look at those objectively
24 and incorporate some changes based on the merit of
25 those facts that were stated.

1 The second thing I want to say is we're
2 not opposed to industrial hygienists overseeing the
3 beryllium program. We're opposed to -- a comment that
4 one of my colleagues already made about industrial
5 hygienists replacing the -- our current steelworker
6 RCTs from actually doing the smears.

7 I would hope that everybody recognizes
8 there's a value to our 20- and 30-year employees, who
9 have the historical and institutional knowledge of
10 that site, taking these smears along with the
11 industrial hygienists. And that's one of the proposed
12 rules. It's also one that has already been
13 implemented.

14 The last comment I'd like to make is that
15 we are in the D&D process here. 779 is well under
16 way; it's our first contaminated building. And,
17 although it's a small building in comparison and it's
18 not as contaminated in relative comparison, we have
19 learned a great deal from that building.

20 There is a historical track record that is
21 available through the company on the surprises that
22 have been found in D&D, and there have been some
23 beryllium surprises. They have found beryllium in
24 areas in rooms that they did not expect.

25 So my point here is that as we go into

1 D&D, it's going to be the most dangerous part of the
2 50 years we've had at Rocky Flats. And included in
3 that danger is finding beryllium were nobody expects
4 it. And we need to enhance, not to diminish,
5 protection.

6 We need to ensure that all workers are
7 covered by this rule, not just certain hands-on
8 workers, because, I guarantee you, as we start peeling
9 away the layers of paint, drilling through the
10 stainless steel walls and floors and taking apart
11 those buildings, we're going to have a lot of
12 exposures that will greatly and detrimentally impact
13 the workers, a great many of them workers who you do
14 not include as your definition is proposed.

15 Thank you.

16 MR. JONES: Thank you, very much, Mr.
17 Navarro.

18 Do you feel -- I have one question of
19 clarification for you. Do you feel -- the provisions
20 in the Notice of Proposed Rulemaking for the baseline
21 activity, the monitoring and then the hazard and
22 exposure assessments in the rule will contribute to
23 trying to find those locations of beryllium before
24 clean-up activities are started. Do you feel that's
25 adequate, or would you like additional provisions

1 there?

2 MR. NAVARRO: I think there need to be
3 additional provisions that enhance the protection as
4 it is and as it's proposed. The biggest problem is
5 that the life-long workers out there are, figuratively
6 and literally, a dying breed: They're retiring, and
7 many of the folks that had the most knowledge have
8 left; and some, because of this cursed disease have
9 died.

10 It's that plant-site historical knowledge
11 as we go through the D&D process that is greatly
12 needed when these buildings start coming down. And,
13 as I understand the rule, for the current workers, it
14 strives to greatly diminish and exclude a large number
15 of workers who are going to be in the forefront of
16 D&D.

17 MR. JONES: Okay. Thank you, very much.

18 Does the panel have any other
19 clarifications?

20 (No response.)

21 MR. JONES: Okay. Will there be anyone
22 else who would like to make any statements at this
23 time?

24 (No response.)

25 MR. JONES: Okay. Let me at this time

1 thank you all, very, very much, for these insightful
2 and meaningful comments; these are the types of
3 comments and statements that we appreciate and we
4 needed to hear, and we need these evaluations.

5 We would encourage you to submit your
6 other, more-detailed or additional comments during the
7 written comment period, which goes until March 9. So
8 you still have a little while left to collect your
9 written comments and get those mailed in.

10 As there's no one else at this time that
11 would like to speak, I'd like to adjourn the public
12 hearing at this time until we have an additional
13 speaker show up that would like to speak, at which
14 time I will re-convene the public hearing.

15 Or we will conclude this aspect of the
16 hearing at one o'clock today, and we will reconvene at
17 six o'clock this evening back in this facility, where
18 we have already speakers signed up for the evening
19 session.

20 So -- yes, sir?

21 AUDIENCE MEMBER: Who would you address
22 the written comments to? Would that be to you?

23 MR. JONES: The address for the written
24 comments is in the Notice of Proposed Rulemaking.

25 AUDIENCE MEMBER: In the notice?

1 MR. JONES: And it's also in -- I believe
2 it's in my opening statements. So the address is
3 there, also, for written comments.

4 AUDIENCE MEMBER: Thank you.

5 MR. JONES: So either location, yes, sir.

6 AUDIENCE MEMBER: Because the information
7 I have here does not list the speakers for this
8 evening, do you have a list of the speakers that
9 have --

10 MR. JONES: That is out at the
11 registration desk as the agenda for this evening.

12 AUDIENCE MEMBER: Okay. Thank you.

13 MR. JONES: Yes, sir.

14 And correct me, Andi, but I believe we
15 have one speaker so far, and that's Michael Jackson,
16 who has signed up for this evening.

17 MS. KASARSKY: Yes.

18 MR. JONES: Okay. But, again, if anyone
19 else would like to speak this evening, there'll be
20 time on the agenda for folks who would like to speak.

21 I can't thank you enough for coming here
22 today, for providing us these comments. These are the
23 comments we need to hear, and they will impact the
24 final rule making. And we greatly appreciate that.

25 The meeting is now adjourned until such

1 time as we have a speaker, or we'll formally adjourn
2 at one o'clock, to reconvene at 6:00 p.m. this
3 evening. Thank you all, so very much.

4 (Whereupon, at 12:15 p.m., the hearing was
5 recessed, to reconvene at 6:00 p.m., this same day,
6 February 9, 1999.)
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 E-V-E-N-I-N-G S-E-S-S-I-O-N

2 (6:00 p.m.)

3 MR. JONES: Good evening, and welcome. I

4 am Rick Jones, the Director of the Office of Worker
5 Protection Programs and Hazards Management, EH-52
6 within the Office of Worker Health and Safety in
7 Washington, D.C. On behalf of the Department of
8 Energy, I would like to thank you for coming this
9 evening and taking the time to participate in this
10 public hearing concerning the proposed Chronic

11 Beryllium Disease Prevention Program, CBDPP,
12 particularly those of you who have come from some
13 distance.

14 The purpose of this hearing is to receive
15 oral testimony from the public on the DOE's Notice of
16 Proposed Rulemaking, or the NOPR. Your comments are
17 not only appreciated, they are essential to the
18 process.

19 The publishing of the Notice of Proposed
20 Rulemaking that is the subject of today's public
21 hearing has been preceded by two years of information
22 gathering and data analysis by the Department. In
23 1996, the Department surveyed its contractors to
24 characterize the extent of beryllium usage, the types
25 of tasks involving beryllium usage, the controls in

1 place for each task and the estimated exposure levels
2 associated with each task.

3 To supplement the data obtained from the
4 1996 survey, the Department published a Federal
5 Register notice on December 30, 1996, requesting
6 scientific data, information and views relevant to a
7 DOE beryllium health standard. The survey and Federal
8 Register notice were followed by two Beryllium Public
9 Forums, held in Albuquerque, New Mexico, and Oak
10 Ridge, Tennessee, in January 1997.

11 While the Department moved forward with
12 its rulemaking process, an Interim Chronic Beryllium
13 Disease Prevention Program was issued on July 15,
14 1997, as DOE Notice 440.1 to direct immediate action
15 for the protection of workers while rulemaking efforts
16 continued.

17 The Interim Notice established a Chronic
18 Beryllium Disease Prevention Program that enhanced and
19 supplemented worker protection programs already
20 required by current worker safety and health orders
21 with provisions that are designed to manage and
22 control beryllium exposure hazards in the DOE work
23 place.

24 Because of the complexity and significance
25 of issues regarding the development of a DOE health

1 standard for beryllium, a Beryllium Rule Advisory
2 Committee, or BRAC, was also established in June 1997
3 to advise the Department on issues pertinent to the
4 proposed rulemaking activity. DOE also used the BRAC
5 recommendations and the lessons learned in the
6 implementation of DOE Notice 440.1 to develop this
7 Notice of Proposed Rulemaking.

8 The objectives of the Notice of Proposed
9 Rulemaking are to: One, minimize the number of
10 workers exposed to beryllium; Two, minimize the levels
11 of beryllium exposure and the potential for beryllium
12 exposure; Three, establish medical surveillance
13 protocols to ensure early detection of Chronic
14 Beryllium Disease; and, Four, assist affected workers
15 who are dealing with beryllium health effects.

16 In addition, the Department intends to
17 collect and analyze exposure and health data as part
18 of its ongoing beryllium-related research efforts to
19 ensure the protection of workers' health. DOE will
20 consider amending -- amendments to its regulations as
21 additional information and feedback are collected.

22 If you have not already read the Federal
23 Register notice from December 3, 1998, I urge you to
24 do so. Copies are available at the registration desk.

25 The comments received here today and those

1 submitted during the written comment period, which
2 ends March 9, will assist the Department in the
3 rulemaking process. All written comments must be
4 received by this date to ensure consideration by the
5 Department of Energy.

6 The address for sending in comments is:
7 Jacqueline D. Rogers, U. S. Department of Energy,
8 Office of Environment, Safety and Health, EH-51,
9 Docket Number EH-RM-98-BRYLM, 1000 Independence
10 Avenue, Southwest, Washington, D.C. 20585.

11 As the presiding Official for this
12 hearing, I would like to set forth the guidelines for
13 conducting the hearing and provide some other
14 pertinent information.

15 In approximately 14 days, a transcript of
16 this hearing will be available for inspection and
17 copying at the Department of Energy's Freedom of
18 Information Reading Room in Washington, D.C., as well
19 as at the DOE Oak Ridge and Rocky Flats Public Reading
20 Rooms. The addresses are specified in the Federal
21 Register notice and are also available at the
22 registration desk.

23 The transcripts will also be placed on the
24 Office of Environment, Safety and Health's Chronic
25 Beryllium Disease Prevention Program's Internet web

1 page, which can be accessed at
2 <http://tis.eh.doe.gov/be/>. In addition, anyone
3 wishing to purchase a copy of the transcripts may make
4 their own arrangements with the transcribing reporter
5 to my left.

6 This will not be an evidentiary or
7 judicial type of hearing. It will be conducted in
8 accordance with Section 553 of the Administrative
9 Procedures Act, 5 U. S. C., Section 553, and Section
10 501 of the DOE Organization Act, 42 U. S. C., Section
11 7191.

12 To provide the Department with as much
13 pertinent information and as many views as can
14 reasonably be obtained, and to enable interested
15 persons to express their views, the hearing will be
16 conducted in accordance with the following procedures:

17 Speakers will be called to testify in the
18 order indicated on the agenda;

19 Speakers have been allotted ten minutes
20 for their verbal statements;

21 Anyone may make an unscheduled oral
22 statement after all scheduled speakers have delivered
23 their statements. To do so, please submit your name
24 to the registration desk after the conclusion of the
25 last scheduled speaker;

1 And, at the conclusion of all
2 presentations, scheduled and unscheduled, speakers
3 will be given the opportunity to make a rebuttal or
4 clarifying statement. To do so, again, please submit
5 your name to the registration desk.

6 Questions for the speakers will be asked
7 only by members of the DOE panel conducting the
8 hearing.

9 As I explained, the purpose of this
10 hearing is to receive testimony from the public on the
11 DOE's Notice of Proposed Rulemaking. It is not the
12 purpose of this hearing to discuss individual law
13 suits that have been filed in court or claims that
14 have been filed under the Federal Tort Claims Act.

15 This panel will, therefore, not discuss
16 litigation or claims. Instead, I urge all speakers to
17 provide this panel with their comments, opinions and
18 pertinent information about the proposed rule.

19 As mentioned earlier, the close of the
20 comment period is March 9, 1999. All written comments
21 received will be available for public inspection at
22 the DOE Freedom of Information Reading Room in
23 Washington, D.C., which can be reached at Area Code
24 (202) 586-3142. Ten copies of your comments are
25 requested.

1 If you have any questions concerning the
2 submission of written comments, please see Andi
3 Kasarsky at the registration desk just outside the
4 back entrance. She can also be reached at Area Code
5 (202) 586-3012.

6 Any person submitting information which he
7 or she believes to be confidential or exempt by law
8 from public disclosure should submit to the
9 Washington, D.C. written comments address a total of
10 four copies: One complete copy with the confidential
11 material included, and three copies without the
12 confidential information. In accordance with the
13 procedures established at 10 CFR 1004.11, the
14 Department of Energy shall make its own determination
15 as to whether or not the information shall be exempt
16 from public disclosure.

17 In keeping with the regulations of this
18 facility, there will be no smoking in this room. I
19 would ask you also to please take note of the two
20 exits, both front and rear. Also note that the
21 restrooms, drinking fountain, phone and copy machine
22 are located out the rear exit and to the right.

23 We very much appreciate the effort you
24 have taken in preparing your statements, and are
25 pleased to receive your comments and opinions.

1 I would now like to introduce the other
2 member of the panel. Joining me today is Jacqueline
3 Rogers, an Industrial Hygienist with the Office of
4 Occupational Safety and Health Policy, EH-51, within
5 the Office of Environment, Safety and Health in
6 Washington, D.C.

7 I would also like to acknowledge the
8 presence of line managers and other representatives of
9 the DOE Rocky Flats Field Office and Kaiser-Hill.

10 This introduction has been lengthy but, I
11 hope, useful. Now it's time to move on to the reason
12 we are all here this evening, and that is to listen to
13 public comments on the Notice of Proposed Rulemaking.

14 At this time, I would like to call our
15 speaker on the agenda. For the record, I would ask
16 that the speaker please state his name and who you
17 represent before making your statement.

18 At this time, I would like to call our
19 first and only scheduled speaker so far, and that is
20 Mr. Michael Jackson.

21 MR. JACKSON: Thank you. My name's
22 Michael Jackson. I pretty much represent myself, but
23 I also am the one that started the Beryllium Support
24 Group on the Internet about a year before DOE actually
25 started theirs, too. So I'm probably a little

1 responsible for that.

2 Since I'm the only speaker, I kind of
3 really abbreviated this to match ten minutes. So I
4 guess it's okay if I expand a little bit.

5 MR. JONES: You may expand.

6 MR. JACKSON: Just go -- okay.

7 First, I'd like to say that I think that
8 everybody should be commended for the work that they
9 put into this. It actually turned out a lot better
10 than I was really expecting; I thought there would be
11 a lot of things that would be pulled out, and that
12 really didn't happen. And I think you did some really
13 good work.

14 That being said, now I'm going to say that
15 I believe that the rule as published will not be
16 protective enough to prevent further occurrences of
17 sensitization or Chronic Beryllium Disease. And the
18 reason for that is: Beryllium is one of the -- is one
19 element that, on contact with living cells, kills
20 them. And if those cells are in the lungs, they don't
21 grow back.

22 If those cells are in a cut in the skin,
23 that cut in your skin won't grow back. And that isn't
24 limited to somebody who is positive on an LPT test or
25 anything else; that applies to everybody. If you

1 breathe any quantity of beryllium, it's going to
2 damage the cells in your body. Now, how your body
3 reacts to that after that damage occurs is what goes
4 on and progresses to Chronic Beryllium Disease.

5 But a lot of people think that a certain
6 amount of exposure doesn't create damage. Well, any
7 exposure will create damage.

8 Now, the purpose of the rule is to prevent
9 sensitization and prevent Chronic Beryllium Disease,
10 and the only way that you can prevent that is by
11 either elimination of beryllium or providing adequate
12 protection for workers or anyone else who may be
13 potentially exposed to detectable levels of beryllium.
14 From what I see from the rule as -- DOE is not or --
15 is unwilling to do either.

16 And by, "Unwilling," I mean that DOE still
17 considers exposure to detectable airborne levels to be
18 acceptable. By allowing detectable, unregulated and
19 un-monitored exposures to less than .5 micrograms per
20 cubic meter squared or -- per cubic meter, there will
21 be more cases of sensitization and disease.

22 Now what I'll go into is a little bit on
23 the standards. In 1977, OSHA proposed to reduce the
24 eight-hour TWA exposure to beryllium from 2 micrograms
25 to 1 microgram.

1 What ended up happening there is, after
2 several hearings, a final standard was never
3 published, partially because there was a lot of
4 objections from both the medical community and,
5 primarily, the Department of Energy, and the Secretary
6 of Labor at that time, Ray Marshall, basically just
7 bowed down to pressure from Secretary of Energy
8 Schlesinger at the time and decided that national
9 security was a little bit more important than
10 protecting the worker.

11 At that time, OSHA was proposing about a
12 1 microgram-per-cubic-meter standard. About at the
13 same time, on August 19, 1977, NIOSH was recommending
14 a .5 microgram-per-cubic-meter recommended exposure
15 limit.

16 And they established that .5 microgram
17 limit because, at that time, that was what they
18 considered the only level that they could reliably
19 detect. That didn't mean they wouldn't have gone
20 lower; it just meant that they -- most people that
21 develop standards figure that if you're going to have
22 a standard, you have to be able to measure it.

23 NIOSH today recommends that at all
24 exposure levels, positive, air-purifying respirators
25 be used. That's at all levels. That's not above .5

1 micrograms. That's not -- that's -- any time you're
2 exposed to it, you wear those type of respirators.

3 And, as Janet said this morning, ACGIH today is
4 proposing a .2 microgram standard.

5 As early as 1948, in the Atomic Energy's
6 own report, "Non-occupational Berylliosis," which is
7 rather controversial -- and I'm sure there's people in
8 this room that will think some of that is -- they were
9 linking -- exposures of less than .1 microgram per
10 cubic meter has been associated with disease. And

11 that was in Lorain, Ohio.

12 In 1997, Yoshida, in Japan, in a beryllium
13 copper/industry which -- a lot of people are told that
14 beryllium/copper is safe, that beryllium will be bound
15 in the copper and it will never get exposed -- the

16 Japanese still have some problems there. They ran a
17 study -- I believe it was between 1993 and 1995 --

18 and, according to them -- they actually are the first
19 ones I've seen to come up with a threshold value. And
20 their threshold value is .01 micrograms per cubic
21 meter.

22 And they boldly come out and make a
23 statement that -- they state in there, "Studies showed
24 the T-cells of workers continuously exposed to
25 beryllium of more than 0.1 micrograms per cubic meter

1 can be activated, and that the cell-mediated immune
2 responses of workers can be promoted. On the other
3 hand the BE LPT of workers exposed to beryllium levels
4 less than 0.1 micrograms per cubic meter were shown to
5 be unaffected by beryllium.

6 "These findings suggest that beryllium
7 sensitization is not manifested when levels of
8 beryllium in working environments are less than 0.1
9 micrograms per cubic meter. Therefore, in such cases,
10 workers to do not develop Chronic Beryllium Disease."

11 Now, this is the first scientific study
12 I've seen where somebody has come out and actually set
13 a threshold limit that they say is based on scientific
14 evidence, and that's considerably lower than the DOE-
15 proposed limit of 0.5 micrograms per cubic meter.

16 All the doctors that I know who are
17 studying and treating the disease today will not come
18 out with a level. The two that I've talked to most
19 recently believe that there's probably no level that
20 is acceptable that will prevent sensitization or
21 disease.

22 And, obviously, the limit should be zero,
23 as far as I'm concerned, with protection for workers
24 at detectable limits or for activities where there's
25 a potential for exposure to detectable beryllium. The

1 reason why I'm saying that is, how they've -- at Rocky
2 Flats, we had a situation where they were going to
3 come up with a process there, and it involved some
4 beryllium parts and cleaning some beryllium parts, and
5 they were working on the hazards assessment and
6 everything for it.

7 Well, before they could finish the
8 hazardous assessment, some parts actually got out into
9 the area that nobody recognized to be beryllium until
10 after they had been removed and were out in the room.

11 When somebody finally recognized that beryllium was
12 there, they evacuated the room, the industrial
13 hygienist got in and did some surface swipes and took
14 some air samples, and they found detectable levels of
15 beryllium.

16 What happened is that, basically, that
17 forced them to go back, check their records better and
18 control their parts better so that that didn't occur
19 again. But what happened later was they decided,
20 "Well, we'll check 25 parts that contain beryllium,
21 and, in that process, we'll do our monitoring and
22 everything; And if those come out clean, then we'll
23 decide whether we're going to reduce our controls or
24 back off on some of our controls."

25 At this time, people were wearing NICs and

1 respiratory protection. After 25 parts, they come
2 back, and they have either levels that are considered
3 at decision level, non-detectable, or just slightly --
4 maybe one or two parts that come back with something
5 on them.

6 Now, the first thing that management's
7 going to do is come back and say, "Well, you guys,
8 this doesn't have to be a regulated beryllium area any
9 more, because it doesn't meet the requirement of the
10 greater than 0.5 micrograms per cubic meter. We're
11 almost non-detectable, so we don't even --
12 technically, per the rule, we don't even have to post
13 this," even though they do still post it that they're
14 using beryllium.

15 What could happen -- what concerns me is
16 that -- say they were to run another 25 parts -- we
17 already know that three of them came back with
18 contamination, and they back off on the controls --
19 and, now, you have contamination again, and they're
20 not -- people aren't in respirators, and people may
21 not be in PPE, and, now somebody gets an exposure.

22 What level of exposure is it going to take
23 to start the clock ticking on them? Nobody can really
24 answer that per -- at an individual level, but what
25 the industrial hygienist would then do is go back out

1 and start monitoring. Well, they're monitoring after
2 the fact. They're checking -- you know, once the
3 exposure occurs, you can't reverse it. If it gets
4 into your lungs, you can't get it out of your lungs.

5 So that's why, I think, at all detectable
6 levels or any place where there's a potential for
7 exposure, people should be allowed to have the NICs
8 and the respiratory protection. And I think this
9 should comply with the NIOSH standards for that.

10 Let's see. Let me get back to what I
11 wrote down here.

12 Detecting beryllium after exposure will
13 not prevent disease; disease can only be prevented by
14 preventing the exposure in the first place. Once
15 exposed, an occurrence -- once an exposure has
16 occurred, the clock may be ticking for those exposed.
17 Sampling after the fact is too late.

18 The 2.0 microgram per cubic meter OSHA and
19 .05 microgram per cubic meter DOE Administrative
20 limits are too high. I know it. DOE knows it.
21 Correct it before it's too late for someone else.

22 And I got to thinking this morning that
23 I'd bring in some props and stuff, since I have little
24 bit more time here, to kind of show people a little
25 bit about what we go through.

1 What generally happens for those of us
2 that have this problem is that the first thing they
3 have to do is they have to rule out all of these
4 different things they could possibly have instead of
5 CBD. So they always go for our sinuses and stuff like
6 that, and they hit us with something like Atroven and
7 nasal washes and things like that.

8 When that really doesn't provide a whole
9 lot of relief for us, then they come back and they'll
10 give us another little drug here which will help with
11 the breathing, which is a little deal called Beconase.
12 And then, when Beconase doesn't really do any good,
13 they hit us with a little bit harder type of -- and
14 these are corticosteroids -- we get into a drug like
15 this, which is Asthmacort.

16 The first time I hit Asthmacort was in
17 about 1992 or so. I was coughing so much that I just
18 couldn't hold down any food or anything. That's when
19 I had my first bronchoscopy, laryngoscopy and
20 everything else.

21 The pulmonary specialist at that time
22 basically gave up; he couldn't find anything that was
23 causing my coughing. What he did find was that my
24 vocal chords were bleeding from all the coughing that
25 I was going through. So this is the drug that helps

1 heal vocal chords when they're bleeding. It's also
2 used for -- to kind of relieve a little bit of --
3 breathing and that type of thing.

4 Now, recently, within the last couple of
5 years, another corticosteroid came out; this one's
6 called Flovent. It's probably one of the most
7 powerful inhaled corticosteroids out today. It's one
8 of these deals that requires a little breathing
9 chamber here to try to concentrate what you have.
10 This little tube here of Flovent costs about \$90. The
11 first prescription I got of that was four tubes, and
12 that would barely get me through about a month-and-a-
13 half to two months.

14 On all of these steroids here, I was on
15 what's considered the maximum doses you could get
16 that, if you continue that for extended periods of
17 time, your immune system's affected and it takes about
18 two years for it to back off. This little flow
19 chamber here costs about \$30.

20 What's really interesting is that workers'
21 comp. will pay for all of these drugs here, but they
22 won't pay for the little \$30 arrow chamber that you
23 use to take them. I don't know why, but, at least
24 around here, they don't do it.

25 Now, when all of those don't work, then

1 you get to the wonder drug that was -- first came out
2 about the time I was born, and this is Prednisone.
3 And on Prednisone -- these are 20-milligram tablets
4 here -- when people get to the point to where they
5 have to either get on prior to oxygen or on oxygen,
6 they usually hit them with a pretty good dose. The
7 normal dose is about four of these tablets, anywhere
8 from 60- to 80-milligram doses.

9 Some people have some pretty violent
10 reactions with them and can have some really bad
11 psychotic effects. Long-term use causes a lot of
12 other problems. And a lot of people that read a lot
13 of the literature will know what a lot of those
14 problems are, things like cataracts. I know at least
15 two people in our support group that have lenses in
16 their eyes; they've had cataracts removed.

17 Recently, a situation occurred at my house
18 that kind of brought into light some other problems
19 that you can also have because of this that I had
20 never really thought about very much. Back on
21 Thanksgiving, I had a cat that was diagnosed with
22 diabetes, and I had to start giving her insulin shots.
23 I didn't think about it too much except
24 that, when I had the -- when we went to a support
25 group meeting -- it was around Christmas time, and

1 people had brought in food for us to eat. And about
2 half of the people that were in the room, they
3 couldn't eat any of the cake or brownies or anything
4 that people brought in, and the reason they couldn't
5 eat it was they all had diabetes.

6 And these were people who had been on
7 long-term Prednisone use. A couple of them were on
8 oxygen. It just happens to be one of the side-effects
9 that happens. So not only do you end up with all of
10 these, but, in time, you also end up with this and
11 with this.

12 Now, I know people are aware of the
13 problems that people have with, over a period of time
14 after you get on oxygen, there's always the problem
15 of -- it starts affecting your heart. And you have --
16 will -- eventually, instead of not breathing, you end
17 up with right-lobe heart failure.

18 What happened to my cat was -- I had
19 volunteered for a study at National Jewish. And I had
20 been giving my cat about 1-1/2 units of insulin a day.
21 And I went out to National Jewish. They were taking
22 another biopsy out of me on a skin patch test there.

23 While I was gone, my cat went into insulin
24 shock. By the time I got home, she was -- she had
25 crawled in behind kind of false wall in my house. She

1 had -- was starting to go into a coma; she was just
2 kind of -- sort of growling really bad. She had --
3 was starting to get stiff. She was having a lot of
4 trouble breathing, and I got her to a vet.

5 When I got her to the vet, we got -- they
6 got glucose in her, they had a tube down her mouth and
7 they were pouring fluid out of her lungs because of
8 cardiac failure. They worked on her for about an
9 hour-and-a-half or so, and, eventually, she died.

10 Since that happened, I've talked to a lot
11 of my friends who have relatives who have diabetes.
12 And what they have told me is that they'll have
13 like -- one person told me his mother would be sitting
14 in a chair or something like that and, all of a
15 sudden, she would just kind of -- nobody could get
16 through to her or anything. And it was like she
17 didn't know what was going on or anything like that,
18 they get some orange juice down here, and then she
19 regains consciousness.

20 Well, I didn't happen to be there for my
21 cat. The reason why I'm bringing this up is that, if
22 I was on Prednisone long term, which led to this, that
23 could have very easily have been me because there
24 wouldn't be anybody at my house to get orange juice
25 down me or glucose in me or anything. The same type

1 of thing would happen: You'd -- eventually, it
2 affects your heart, your heart starts going down, you
3 can't breathe, your lungs start filling up with fluid
4 and, eventually, you go into a coma and die.

5 So that's the one little drug I have left
6 for my cat that I never linked to CBD before, and it's
7 not really a result of the disease process itself;
8 it's a result of the treatment. It's a result of the
9 steroids that you have to take to take it.

10 So that's why I emphasize that rather than
11 try to treat somebody after the fact, just prevent the
12 exposure to begin with, and then people don't have to
13 have any of this stuff. That's the most logical thing
14 for me, and I think it's something that the Department
15 of Energy should adopt.

16 Let's see. Now I'll get back to something
17 that was kind of brought up a little bit this morning.

18 I was happily surprised when I saw what
19 there was in there under job protection revisions in
20 Section 850.34. I also find them totally
21 unacceptable, and the reason for that is: Under the
22 current wording, it would exclude most of us who have
23 already been diagnosed with CBD.

24 It -- the way it's written, to me, is
25 that, if -- you've got two years for them to retrain

1 you and get you in another job or something, but, once
2 you get that other job, you're out; basically, you're
3 own your own. If you have a job already where you
4 don't have a restriction or something like that, I'm
5 assuming, that doesn't apply, either.

6 Also, the timing, at least for Rocky
7 Flats, is not very good. If the plan as it is today:
8 Rocky Flats closes in 2006. It doesn't take very much
9 arithmetic to realize that when you have a latency
10 period of seven to 15 years for a disease that, if
11 somebody's -- if your controls don't work today and
12 somebody's diagnosed and they go through all of this
13 stuff, what will happen is that they won't be there to
14 benefit from the provisions in this.

15 They'll be gone by the time that happens.
16 They'll be subject to either workers' comp. or
17 whatever insurance they may or may not have at the
18 time. I think the provisions should be included so
19 that when people leave Rocky Flats, if later they're
20 diagnosed, they can come back and pick those up.

21 In the rule, DOE assumes that everything
22 will be better in two years. Everything will never be
23 better. Regardless of benefits that may be provided
24 by this rule, settlements reached and workers'
25 compensation or other legal actions, the disease will

1 progress.

2 If somebody were to give me \$10 million
3 tomorrow, the only thing that would help with my
4 condition is that I wouldn't have to go back to Rocky
5 Flats tomorrow, but it will not prevent the final
6 outcome of the disease. Again, that's why you have to
7 control the exposure up front and not go out there and
8 do a lot of monitoring after the fact.

9 I am, therefore, demanding at a minimum
10 that the following provisions be included in the rule:

11 Everyone must be treated equally under the
12 rule regardless of whether an individual is a
13 beryllium worker or an officer worker. We have more
14 than one, more than two -- more than three people who
15 didn't even know what beryllium was that now have CBD.

16 So just because you're not working in a
17 regulated area, if you're in a place like Rocky Flats
18 that has had beryllium throughout the majority of its
19 buildings in its history, it's very easy to miss with
20 their samples or with smears that that exists.

21 And you start moving file cabinets around,
22 you start moving machines around and you start
23 disturbing things, and you can end up with an exposure
24 that nobody knows where it came from when they start
25 having their health effects later because nobody

1 smeared underneath the bed of a lathe that just got
2 moved.

3 In Washington, D.C., there was an idea of
4 coming up with an ombudsman, kind of an independent
5 person, that can kind of help people with the disease,
6 somebody that has a little bit more at stake, in
7 helping people find other jobs and stuff like that.

8 As I know at least one of you in here
9 knows because you got the letter that I sent to
10 Secretary Richardson, last year, before the end of the
11 fiscal year, because of cut-backs, one person who has
12 CBD was laid off at Rocky Flats. Not only was he --
13 did anybody try to find him another job, he signed up
14 for several other jobs, was turned down on all of
15 them, and he eventually left.

16 This is a person with over 20 years of --
17 with seniority out there that -- he's put out on the
18 street because they say they have to run their numbers
19 down to five numbers. That happened.

20 Now, since then, I've talked to the
21 president of the company that he works for; that
22 particular person didn't seem to like what I said
23 about it, and I think we may be able to do something
24 about it. But the fact is: It should never have
25 happened at all.

1 The brother of this person basically told
2 me that he wasn't even given the time of day when he
3 started questioning people, "Well, you know, what
4 about 10 CFR 850; What does that mean; What
5 provisions" -- you know, "Well, what are my rights
6 under that," and they basically told him, "We don't
7 know anything about that," and, "We have numbers to
8 cut back; We're cutting back our numbers; That's it,"
9 and that was all that happened, and he was out the
10 door.

11 He later came back as an hourly employee,
12 but at a considerable cut in pay, and there's a loss
13 of seniority and the whole works. But that has
14 occurred. That's not a, "Maybe it will occur"; it has
15 occurred, and it has occurred at Rocky Flats.

16 I also think that no person currently
17 worked at -- working at a DOE facility who's
18 sensitized or who has been diagnosed with CBD should
19 be terminated due to out-sourcing or cut-backs until
20 a final 10 CFR 850 is implemented.

21 Additionally, all provisions, such as the
22 two-year limit if allowed to stand, would not start
23 until implementation of the rule regardless of the
24 date of diagnosis of sensitization of CBD --
25 sensitization or CBD.

1 Also, those diagnosed with CBD should be
2 assured continued employment without loss of pay,
3 seniority or benefits until such time that they are
4 eligible to retire with unreduced benefits that are --
5 or unable to work due to disability or voluntarily
6 terminate. And in the case of a facility like Rocky
7 Flats that's closing down, that may mean that they
8 should be offered positions at some other facility if
9 they choose.

10 DOE has a lot of facilities around;
11 they'll be around a long time. Some of us, like me,
12 are ten years away from retirement with un-reduced
13 benefits. So I either have to keep working or -- who
14 knows? Maybe I won't be able to work for another ten
15 years.

16 Those who leave due to disability should
17 be given disability retirement with full medical at no
18 cost to the individual. Also, I'd like to see that
19 those who leave voluntarily shall be allowed to
20 participate in any voluntary separation programs which
21 were in effect at the time of diagnosis, with medical
22 benefits at no cost to the individual, and be allowed
23 to retire with unreduced benefits regardless of age.

24 This gets into the point of: If it gets
25 to where all of the problems we have between

1 psychological, the health problems and everything else
2 gets to us, sometimes, it's just better to eliminate
3 of that stress and take care of your body, and, in
4 doing that, leaving, at least there, may be the best
5 thing to do.

6 You tell an insurance agent that you're
7 taking Prednisone, and that's the quickest way to
8 never have an insurance agent call you back. I have
9 a considerable amount of life insurance; I've had it
10 since I was 12 years old.

11 When I finally was diagnosed and when I
12 first went on this, they came out to ask me what was
13 going on. And, basically, he has never -- other than
14 our normal little yearly summaries and stuff, he
15 doesn't bother me any more to buy any more insurance,
16 because I can't buy insurance.

17 If I were to leave Rocky Flats, I would
18 not be able to pass a pre-employment physical. I
19 could be denied employment. Very simply, I mean the
20 stuff I have shows up on X-rays pretty good; it's not
21 the type of thing you can hide very easily. And I
22 think that that should be something that, upon
23 leaving, you get.

24 There has been a lot of talk at Rocky
25 Flats about voluntary separation payments. They want

1 to come up with programs to get people to leave; at
2 the same time, they want to have some things there to
3 get people to stay to -- that they need to get there
4 and get us through closure on schedule so that the
5 contractors can get their big bucks.

6 One of the things they want to do is come
7 up with enhanced retirement programs and things.
8 Well, these enhanced retirement programs will benefit
9 the managers out there, the administrative people, but
10 they're not going to benefit the workers.

11 They're not going to benefit the people
12 that have to do the work. Those people are either
13 going to be third-tier or fourth-tier or fifth-tier or
14 sixth-tier, and they're going to be working on a
15 project-to-project basis, which may mean that you work
16 for two months, you might work for a year or you may
17 not work at all again.

18 So I think that there should be something
19 included in these programs that cover those of us that
20 have especially a diagnosed disease like CBD. There
21 has been talk about people with radiation exposures,
22 too, but, you know, not too many people that I know
23 with radiation exposures have drugs like that that
24 they're taking regularly. And it's not something that
25 I like; I mean I can't even stand taking pills, but,

1 if you have to, you have to.

2 When it comes to former workers, I think
3 former workers who are sensitized and then, later,
4 through the former Worker Beryllium Surveillance
5 Program, are diagnosed with CBD should be given full
6 medical benefits at no cost to the individual and,
7 also, be allowed to retire with unreduced benefits
8 regardless of age.

9 The reason why I keep bringing up the
10 stuff with retirement is that, if somebody has a
11 guaranteed income coming in and they have their
12 medical benefits coming in, then they have a little
13 bit more freedom as to being able to go out and take
14 a job that they may be able to work for three months,
15 six months or they may even find another -- a job that
16 will last longer. But, at least, the pressure won't
17 be there that you absolutely have to have a job to
18 cover what you may or may not have to go through.

19 As some of you in this room know, on
20 Friday, I'll be going through a cardiac
21 catheterization to check out my heart. Now, CBD leads
22 to heart problems, normally right-lobe heart failure.
23 Because of other things going on, the coughing --
24 which I haven't done so far speaking here; that's
25 partially because of breathing exercises that I took

1 at National Jewish, but -- there's a possibility that
2 the heart problems that now I'm experiencing could be
3 related to CBD.

4 If I were to have been laid off, like that
5 other individual last year, and wouldn't have a job,
6 I may not be able to afford to go in for a heart
7 catheterization. It looks like I probably, and most
8 likely, will be going in for aortal heart valve
9 surgery, too.

10 These are expensive procedures. It would
11 probably take me six or seven months of fighting with
12 the workers' comp. system and a bunch of doctors to
13 come up with, "Is it related, or is it not," to get it
14 covered with workers' comp., but I really don't have
15 a whole lot of time to do that.

16 When I left this morning and got home, my
17 blood pressure was running at about 161 over 110.
18 That's a problem I've been having. My blood pressure
19 has been going all over, and I've been dizzy. I can't
20 even go into the process areas at Rocky Flats any more
21 because medical won't even give me a medical card
22 until this is all taken care of.

23 That's why the medical benefits are
24 important. No-cost is important because, before EG&G
25 took over, all of these benefits were paid for, 100

1 percent, by me or -- by the company. Now it costs
2 about \$15 a month for me to pay for the benefits at
3 Rocky Flats, and I'll probably have to pay about
4 \$2,000 for the procedures that I'll be going through
5 now.

6 The reason for that is: Because I had the
7 choice here a couple of months ago or before the first
8 of the year to get into one of the HMOs, which meant
9 that you go to an HMO doctor and, unless you're just
10 about ready to hop into a coffin, you may or may not
11 be able to get out and get to a procedure, and you may
12 or may not be able to see the same doctor twice.

13 I choose the conventional plan so that I
14 can pick and choose my doctors; if I want to go to
15 National Jewish, I can. If I want to go across town,
16 I can. And that costs a lot more money, but it's the
17 only thing, considering the things that can come up
18 with me, that I -- it's the only way I can actually do
19 it.

20 When it comes to all of these benefits, I
21 have this little statement here that I say: Anything
22 less, and everyone involved with this at DOE should be
23 ashamed.

24 And two years ago in August -- I don't
25 remember the person who came up and spoke, but he

1 didn't speak his normal speech. He did say that
2 because of all the cases of CBD that have been going
3 on in the DOE complex, the DOE should be ashamed that
4 it was allowed to occur.

5 The hazards of CBD -- of beryllium have
6 been known for 60 -- 50 years now -- actually, longer
7 than that. I think you've got a good start on it, on
8 this plan, but I think there's a little bit more work
9 to do. And I hope you take some of my recommendations
10 here.

11 And I guess I look forward to seeing
12 exactly what you guys do come up with. But that's
13 about all I can think of unless you want me to try to
14 talk for another two hours.

15 MR. JONES: Thank you, Mr. Jackson.

16 That --

17 Do you have any comments for the speaker?

18 (No response.)

19 MR. JONES: Thank you, very --

20 MR. STONE: I have one. May I ask a
21 question?

22 MR. JONES: Not to the speaker, sir, but
23 I'll be glad to --

24 MR. STONE: Why not?

25 MR. JONES: Well, because the proceedings

1 of --

2 MR. STONE: You have no other speakers on
3 the agenda.

4 MR. JONES: That's correct, sir. But the
5 proceedings --

6 MR. STONE: If I got up, I'd give a talk.
7 But I'd ask you more questions that you could defer
8 somewhere else. This gentleman can answer my
9 questions.

10 MR. JONES: Feel free to comment --

11 MR. STONE: If you want to learn
12 something, that's the way to do it.

13 MR. JONES: I would offer that you're free
14 to contact him after the meeting --

15 MR. STONE: All right.

16 MR. JONES: -- to hold a discussion if
17 you'd like.

18 MR. STONE: Thank you.

19 MR. JONES: Thank you, sir.

20 Well, thank you, very much, for sharing
21 your personal situation. And your comments are very
22 insightful and very helpful to us in formulating the
23 final rule, and we very much appreciate your
24 participation this evening.

25 Would there be any other additional

1 speakers that would like to speak at this time?

2 (No response.)

3 MR. JONES: Okay. What I'd like to do at
4 this time then is adjourn --

5 Yes?

6 MR. KOLANZ: Are you going to ask for
7 additional clarifying statements?

8 MS. ROGERS: Yes.

9 MR. JONES: I can do that if you'd like.
10 Would --

11 MR. KOLANZ: I'm just trying to keep to
12 the protocol.

13 MR. JONES: I appreciate that.

14 MR. JACKSON: I'd be surprised if you
15 didn't.

16 MR. KOLANZ: I'd like to make a clarifying
17 statement if I could.

18 MR. JONES: Okay.

19 MR. KOLANZ: If Michael will clear his
20 stuff --

21 MR. JACKSON: I'm working on it.

22 MR. JONES: If you would --

23 MR. JACKSON: I'm working on it.

24 MR. JONES: -- please give your name and
25 affiliation.

1 MR. KOLANZ: Hello. My name is Marc
2 Kolanz, and I represent Brush-Wellman, Incorporated.

3 I guess, first, I'd like to say I have
4 nothing but respect for Michael Jackson and his good-
5 faith efforts really to get the word out; I think he
6 has done a good job doing that. On beryllium health
7 and safety, he has expanded the knowledge and the
8 availability of that knowledge to many people. I only
9 wish to add some clarifying statements regarding three
10 of the points he made.

11 You're right: I couldn't let a couple of
12 them go by.

13 The reference to -- the 1977 OSHA and
14 NIOSH proposals to reduce the occupational standard
15 were based on a cancer study which ended up being
16 remanded back to NIOSH to -- for the study to be re-
17 done. Their proposals were not based on prevention of
18 CBD. So the reduction by one microgram or to .5 were
19 both cancer-based recommendations.

20 The -- another statement referencing the
21 Atomic Energy Commission Lorain Study of which -- this
22 was a Brush-Wellman facility that worked
23 collaboratively with the Atomic Energy Commission to
24 obtain information to see what was going on at that
25 facility or, I should say, what was going wrong at

1 that facility.

2 But the community standard that was looked
3 at or -- the data did show that there were cases --
4 community cases of CBD at levels of about .1
5 micrograms per cubic meter. This was -- and that was
6 on the furthest reaches of the study. This was based
7 on exposure to a population essentially seven days a
8 week, 24 hours a day, versus the typical work week.

9 So there is some just -- again, just a clarifying
10 statement there.

11 The last item was referencing to both
12 Yoshima and Yoshida papers out of Japan. These papers
13 both attempted to make reference as to what exposure
14 levels were causing Chronic Beryllium Disease and/or
15 sensitization in a Japanese alloy metals population.

16 And in that case, the thing that was not
17 clear in the seventies studies by Yoshima and was
18 recently clarified by Yoshida in response to a letter
19 to the editor regarding the recent paper was that the
20 sampling method used in Japan only takes general area
21 samples, and that is what the law requires in Japan.

22 And I think there have been several papers
23 out there that have clarified that exposures to
24 general area samples -- and this is one of the same
25 problems, I think, that Rocky Flats had with their

1 general area samples, versus -- trying to determine
2 what the person was exposed to, rather than what was
3 in the general area.

4 Again, those are -- I fully respect the
5 work that Michael has done. And he has been a real
6 asset to a lot of folks in helping them deal with this
7 issue. And I thank you for your time.

8 MR. JONES: Very good.

9 Would anyone else like to make any
10 comments?

11 MR. STONE: I'd like to ask you a
12 question, as this gentleman did. If I can't ask the
13 speaker a question, may I ask the board a question?

14 MR. JONES: Certainly.

15 MR. STONE: Fine. Thank you. My name is
16 Jim Stone; I'm a professional engineer with experience
17 with Rocky Flats from its initial design to my
18 termination in '86, when the beryllium shops were shut
19 down.

20 I'm concerned about the status of the
21 clean-up of the beryllium problem at Rocky Flats. I
22 would like to know the condition of the beryllium
23 shops in Building 444.

24 MR. JONES: That is your question, sir?

25 MR. STONE: Yes, sir.

1 MR. JONES: Okay. Let me clarify that the
2 purpose of this public hearing is to address the
3 content of our Notice of Proposed Rulemaking. I would
4 propose that you could ask that question to the local
5 DOE office or DOE contractor, and they would be in a
6 much better position to answer your question.

7 MR. STONE: I'm sure they would be. Thank
8 you.

9 MR. JONES: Thank you, sir.

10 Would anybody else like to make any
11 statements at this time?

12 (No response.)

13 MR. JONES: Okay. I would just like to
14 remind you that the public review and comment period
15 is open until 9 March. We would very much appreciate
16 your written comments, and the addresses are provided
17 in the Notice of Proposed Rulemaking.

18 At this time, I'd like to adjourn the
19 hearings until such time as we do get another speaker
20 to sign up. And we will keep the proceedings open
21 until we do get a speaker or until it's clear that we
22 won't have one. And then, by nine o'clock, these
23 hearings will be terminated.

24 So thank you all, very much, for coming.
25 Hopefully, we'll get some more speakers. And we'll be

1 here to entertain any speakers that would like to sign
2 up at the registration desk.

3 Thank you all, very much. We are hereby
4 adjourned at this time.

5 (Whereupon, at 9:00 p.m., this public
6 hearing was concluded.)
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25